

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO GAILE GUYTON,

Petitioner,

No. CIV S-02-1377 FCD GGH P

vs.

GAIL LEWIS, et al.,

Respondents.

ORDER

On February 6, 2007, the Ninth Circuit Court of Appeals remanded this matter to this court for the purpose of granting or denying a certificate of appealability as to the December 26, 2006, order disregarding petitioner's December 11, 2006, request for relief from judgment pursuant to Fed. R. Civ. P. 60(b). The order from the Ninth Circuit was filed in this court on August 10, 2007.

A certificate of appealability may issue only if petitioner has made a substantial showing that the court abused its discretion by denying the Rule 60(b) motion. Lynch v. Blodgett, 999 F.2d 401, 402-403 (9th Cir. 1993).

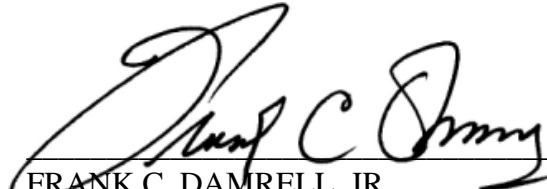
Petitioner's main problem, as set forth in his December 11, 2006, 60(b) motion, is the alleged lack of communication between him and the counsel who represented him in these proceedings. This issue does raise a colorable claim for relief from judgment pursuant to Rule

1 60(b). Accordingly, the court did not abuse its discretion by denying the 60(b) motion.

2 Accordingly, a certificate of appealability should not issue in this action.

3 IT IS SO ORDERED.

4 DATED: August 23, 2007.

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7 FRANK C. DAMRELL, JR.
8 UNITED STATES DISTRICT JUDGE
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